ORIGINAL

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION



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COMMISSIONERS

JEFF HATCH-MILLER, Chairman WILLIAM A. MUNDELL MARC SPITZER MIKE GLEASON

KRISTIN K. MAYES

AZ CORP COMMISSION DOCUMENT CONTROL

6 In the matter of:

DOCKET NO. S- 20392A-05-0507

THOMAS C. MESSINA [a/k/a THOMAS CAMPBELL MESSINA and TOM C. MESSINA] and DONNA M. MESSINA, husband and wife, 17212 N. Scottsdale Road, # 2239 Scottsdale, Arizona 85255

NOTICE OF OPPORTUNITY FOR HEARING REGARDING **PROPOSED** ORDER CEASE AND DESIST, ORDER RESTITUTION **ADMINISTRATIVE FOR PENALTIES** AND **FOR OTHER AFFIRMATIVE ACTION**

Respondents.

NOTICE: EAC

EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent THOMAS C. MESSINA has engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

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RESPONDENTS

2. THOMAS C. MESSINA ("MESSINA"), an individual, is a resident of the State of Arizona, whose last known address is 17212 N. Scottsdale Road, Apartment #2239, Scottsdale, Arizona 85255.

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3. DONNA M. MESSINA ("D. MESSINA") was at all relevant times the spouse of MESSINA and is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, MESSINA was acting for his own benefit, and for the benefit or in furtherance of the marital community.

III.

FACTS

- 5. From April 2003 through December 2003, MESSINA, offered and sold securities in the form of investment contracts and promissory notes, to at least nine investors, within or from Arizona, totalling approximately \$324,000.
- 6. MESSINA told offerees and investors that he was a successful real estate investor and developer, investing in real estate projects on behalf of his clients. He told them that he was making investments on behalf of more than 20 real estate investors. However, contrary to his claim, MESSINA did not earn any income as a real estate investor during the time he was raising money from investors.
- 7. MESSINA told offerees and investors that he would use their investments to purchase real estate in Phoenix, Arizona. The real estate that he purchased would then be developed into low-income housing. MESSINA told offerees and investors that buyers had already been approved to purchase these homes.
- 8. MESSINA showed potential investors various land lots and construction projects throughout Phoenix and claimed the land and/or projects belonged to him or his investors.
- 9. MESSINA told offerees and investors that Robert Ballard of Candlewood Fine Homes had been hired as one of the builders he planned to use for planned construction projects. MESSINA gave potential investors Mr. Ballard's personal resume, development project history and a company brochure. Although MESSINA and Mr. Ballard had met to discuss the possibility

of hiring Mr. Ballard, Mr. Ballard was not hired as the builder for any of MESSINA'S proposed projects.

- 10. MESSINA led the investors to expect to receive a profit from his efforts if they invested with him. MESSINA told offerees and investors that he would repay their principal investment in twelve monthly principal payments, until all of the interest was repaid, then monthly interest payments would follow. MESSINA promised offerees and investors a 100% return on their investment.
- 11. The offerees and investors entered into investment contracts based on MESSINA'S oral promise of repayment except for two investors who received signed promissory notes. Offerees and investors invested with MESSINA with the expectation that their money would be invested in real estate.
- 12. MESSINA deposited the \$324,000 he collected from investors into his personal bank account. He did not use the investors' money to purchase real estate or fund construction projects.
- 13. MESSINA made some initial payments to investors but the payments eventually stopped.
- 14. Subsequent to their investment, MESSINA lulled investors by claiming that he had \$6 million invested in land and real estate projects. MESSINA told investors that he invested \$1 million of his own money.
- 15. After his payments stopped, MESSINA lulled investors by sending them monthly letters claiming that he was unable to pay them because his business partner embezzled money from the business bank account. In the letters, MESSINA claimed a bank investigation and legal action had commenced in order to recover investor funds.
- 16. MESSINA continued to lull investors with additional claims that his bank had begun legal action against the original builder, hired a new builder and started construction on pending real estate projects.

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1	17.	MESSINA was not a registered securities dealer or salesman. The securities were
2	not registered	with the Securities Division.
3		IV.
4		VIOLATION OF A.R.S. § 44-1841
5		(Offer or Sale of Unregistered Securities)
6	18.	From about April 2003 to December 2003, RESPONDENT MESSINA offered or
7	sold securities	in the form of promissory notes and investment contracts, within or from Arizona.
8	19.	The securities referred to above were not registered pursuant to Articles 6 or 7 of the
9	Securities Act	•
10	20.	This conduct violates A.R.S. § 44-1841.
11		V.
12		VIOLATION OF A.R.S. § 44-1842
13		(Transactions by Unregistered Dealers or Salesmen)
۱4	21.	From about April 2003 to December 2003, MESSINA offered or sold securities
15	within or from	Arizona while not registered as a dealer or salesman pursuant to Article 9 of the
16	Securities Act	•
17	22.	This conduct violates A.R.S. § 44-1842.
18		VI.
19		VIOLATION OF A.R.S. § 44-1991
20		(Fraud in Connection with the Offer or Sale of Securities)
21	23.	In connection with the offer or sale of securities within or from Arizona, MESSINA
22	directly or in	directly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue
23	statements of	material fact or omitted to state material facts which were necessary in order to make
24	the statements	s made not misleading in light of the circumstances under which they were made; or
25	(iii) engaged i	n transactions, practices or courses of business which operated or would operate as a
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fraud or deceit upon offerees and investors. MESSINA'S conduct includes, but is not limited to, the following:

- a) MESSINA misrepresented to offerees and investors that he was a successful real estate investor and developer, when in fact he had not purchased real estate or completed a construction project.
- b) MESSINA failed to disclose to offerees and investors that he had not earned any money as a real estate investor or developer.
- c) MESSINA misrepresented to offerees and investors that more than 20 investors had invested \$6 million with him in real estate projects.
- d) MESSINA misrepresented to offerees and investors that he would repay them their principal investment in twelve equal installments followed by monthly interest payments, when in fact none of the investors have received full payment of their principal investment or the interest promised.
- e) MESSINA misrepresented to investors that they had not been repaid because MESSINA'S business partner embezzled investors' funds from his business account, when in fact MESSINA did not have a business account but only a personal account on which MESSINA and his wife, D. MESSINA, were the only signors.
- f) MESSINA misrepresented to some offerees and investors that home builder, Robert Ballard, was hired as the builder for his real estate project, when in fact MESSINA had not hired Mr. Ballard.
- g) MESSINA misrepresented to offerees and investors that their investments would be used to purchase real estate in Phoenix, Arizona to develop a low-income housing project, when in fact MESSINA had not purchased real estate or funded any construction projects.
- h) MESSINA misrepresented to offerees and investors that the vacant lots and construction projects he showed them were examples of his real estate investments and

construction projects, when in fact MESSINA had not purchased any real estate or started any projects.

24. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- 1. Order MESSINA to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
- 2. Order MESSINA to take affirmative action to correct the conditions resulting from his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 3. Order MESSINA and D. MESSINA to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 4. Order that the marital community of MESSINA and D. MESSINA be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
 - 5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

MESSINA and D. MESSINA, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. If any respondent requests a hearing, respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet

form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail lhogan@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if MESSINA and D. MESSINA requests a hearing, MESSINA and D. MESSINA must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, MESSINA and D. MESSINA must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Rachel F. Strachan.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each MESSINA or his attorney and D. MESSINA or her attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When MESSINA and D. MESSINA intend in good faith to deny only a part or a qualification of an allegation, MESSINA and D. MESSINA shall specify that part or qualification of the allegation and shall admit the remainder. MESSINA and D. MESSINA waive any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 20 day of July, 2005.

Matthew J. Neubert Director of Securities